

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

June 26, 2009

Tanya Thomas
900 Edwards Boulevard
Unit 905
Millsboro, DE 19966

Henlopen Cardiology
18958 Highway One
Rehoboth Beach, DE 19971

Re: *Tanya Thomas v. Henlopen Cardiology*
C.A. No. 08A-07-002-RFS

Upon Appellant's Appeal of the Unemployment Insurance Appeal Board.
Affirmed.

Submitted: April 21, 2009

Dear Parties:

This is an appeal from the July 10, 2008 decision of the Unemployment Insurance Appeal Board ("Board") denying benefits to Tanya Thomas ("Appellant"). Appellant now appeals the decision of the Board. For the reasons set forth below, the Board's decision is upheld.

BACKGROUND

Appellant was hired to work as a medical clerk by Henlopen Cardiology (“Appellee”) starting on Monday, June 4, 2007. Beforehand, she was injured in an automobile accident in April of 2006. The accident caused back troubles. On Tuesday, June 5th, she called her supervisor, a nurse, to inform her that she was sick and would stay home. On Wednesday, June 6th, she was diagnosed at Beebe Medical Center (“Beebe”) with severe back pain and excused from work for two days. She reported this problem to her supervisor. Her supervisor told her that she would have to obtain a doctor’s note. If she could not do the job, the position could not be held open. The supervisor also asked her to keep in touch. The supervisor did not hear from Appellant again until two or three weeks later when she asked how to get her paycheck.

Appellant has claimed that she was fired because Appellee would not give her more time to deal with her back injury and did not keep the position open for her. Appellee has argued that Appellant failed to return to work and failed to disclose her back problem when interviewed for the position. From its perspective, Appellant quit for personal reasons without good cause.

Appellant was denied unemployment benefits by the Claims Deputy on December 18, 2007. She filed an appeal but the decision of the Claims Deputy was affirmed by the Appeals Referee on March 5, 2008. Appellant filed an appeal to the Board. On July 10, 2008, the Board determined that Appellant left her job without good cause and affirmed the decision of the Referee. Thereafter, the Board’s decision was appealed to this Court.

STANDARD OF REVIEW

The review of a decision of the Unemployment Insurance Appeal Board is limited to an examination of the record for errors of law, and a determination of whether substantial evidence exists to support the Board's findings of fact and conclusions of law. *Histed v. E. I. Du Pont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993); *Willis v. Plastic Materials*, 2003 WL 164292 (Del. Super. 2003) at *1. Substantial evidence equates to "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981). It is more than a scintilla but less than a preponderance of the evidence. *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988). In conducting its review, this Court is not to engage in the practice of judging witness credibility or weighing the evidence proffered; those functions are reserved exclusively for the Board. *Id.* at 1106.

Questions of law are reviewed de novo. *McDonalds v. Fountain*, 2007 WL 1806163 (Del. Super. 2007) at *1. Absent error of law, the standard of review for a Board's decision is abuse of discretion. *Opportunity Center, Inc. v. Jamison*, 2007 WL 3262211 (Del. Supr. 2007) at *2. The Board has abused its discretion only when its decision has "exceeded the bounds of reason in view of the circumstances." *Willis* at *1.

DISCUSSION

The Board correctly stated the law and the critical point for decision at page 2 of its decision:

The issue in this case is whether the claimant voluntarily left her employment, and, if so, whether she left with good cause related to that employment.

An individual who leaves work voluntarily, and without good cause attributable to her job, is disqualified from receipt of unemployment benefits. 19 *Del.C.* § 3314(1). In this situation, the burden of proof rests with the claimant to prove entitlement to unemployment compensation. *White v. Security Link*, 658 A.2d 619, 622 (Del. Super. 1994). The claimant must show “good cause” for voluntarily terminating employment. *Longobardi v. U.I.A.B.*, 287 A.2d 690, 692 (Del. Super. 1971); *affirmed* 293 A.2d 295 (Del. 1972). Good cause for quitting a job must be such cause as would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed. *O’Neal’s Bus Service, Inc. v. Employment Security Comm’n.*, 269 A.2d 247, 249 (Del. Super. 1970). Good cause requires a finding that the primary motivating cause for quitting was connected with the employment, and not for personal reasons unrelated to employment. *Brainerd v. Unemployment Compensation Comm’n.*, 76 A.2d 126, 128 (Del. 1950).

Upon review of the record, the Board’s decision is supported by sufficient evidence and is legally correct.

Appellant worked one day as a medical file clerk on Monday, June 4, 2007. (Tr. 40, 41). Initially, she did not reveal her prior back injury from the automobile accident. (Tr. 47). On Monday, she complained that she might not be able to do the job but made no specific reference to her back (Tr. 50, 76). She would not have been hired if the pre-existing condition was known because it would not be compatible with the lifting and filing required of a medical clerk. (Tr. 50, 76).

On Tuesday, June 5, 2007, Appellant called and advised that she was too sick to work. (Tr. 41). On Wednesday, June 6, 2007, Appellee was diagnosed with chronic back pain at Beebe. She was excused from work for Wednesday and Thursday. (Tr. 33, C #1).

For the first time on Wednesday, Appellant shared her problems that arose from the accident with Appellee. (Tr. 47). Appellee advised her to get a doctor's note to show her ability to perform a medical clerk's duties. She was further told that the job could not be held open for her. (Tr. 48).

Appellant was scheduled to work on Friday, June 8th. She did not work; Beebe had excused her only for the preceding two days. Although aware that she was expected to work on Monday, June 11th, Appellant never returned to work. Her absence was due to continuing back problems arising from the automobile accident, and surgery was required to correct the condition on January 8, 2008. (Tr. 44).

The parties disagreed about when her back condition was disclosed. Appellant claimed disclosure was made before being hired. Furthermore, there were differences about the regularity of her phone calls. Appellant claims that she called Appellee daily about her condition during the week of June 8th. (Tr. 71, 73). Appellee disputes this and infers that she lost interest and only called in to get a paycheck. (Tr. 47, 49). Questions of disputed facts and credibility are decided by the Board; the Court is not empowered to disturb these determinations. *Breeding* at 1106.

The burden was on Appellant to show good cause to quit her job. Appellant claimed she was fired which is not supported by the record. (Tr. 73). Rather, competent evidence supports the Board's conclusion that she left because of chronic back pain from the automobile accident. In this context, her leaving was due to personal reasons which were unrelated to the employment.

Appellant also argues that her supervisor could have done more to work with her. Regardless, this circumstance is not decisive. The issue in the hearing was whether Appellant was fired or quit voluntarily, not whether Appellee did everything conceivable to keep her.

CONCLUSION

Considering the foregoing, the decision of the Unemployment Insurance Appeal Board must be affirmed.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv

cc: Prothonotary